

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Recycling Services (RSI)</b>	)	
	)	
<b>-vs-</b>	)	<b>04-0614</b>
	)	
<b>The Peoples Gas Light and Coke</b>	)	
<b>Company</b>	)	
	)	
<b>Complaint as to People's refusing to</b>	)	
<b>supply natural gas service as requested</b>	)	
<b>by RSI in Chicago, Illinois</b>	)	

**RESPONDENT'S INITIAL BRIEF**

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**RESPONDENT’S INITIAL BRIEF**

Now comes the Respondent, THE PEOPLES GAS LIGHT AND COKE COMPANY, by its counsel, MARK L. GOLDSTEIN, and files its Initial Brief.

**I. INTRODUCTION**

Complainant, Recycling Services, Inc. (“RSI”) complains that it has been denied gas service by Respondent, The Peoples Gas Light and Coke Company (“Peoples”) and requests that the Illinois Commerce Commission (“Commission”) order Respondent to provide gas service to Complainant immediately and further award unspecified money damages to Complainant for Peoples’ failure to provide gas service to RSI’s facility at 3152 South California Avenue, Chicago, Illinois (the “Property”). RSI leases the Property from its landlord, the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”). In fact, Peoples provided gas service to RSI without the Commission’s intervention and the ALJ has ruled that the Commission lacks authority to award money damages to RSI. This Complaint continues because the ALJ construed RSI’s complaint as a request for the Commission to determine whether a violation of the Illinois Public Utilities Act, 220 ILCS 5/1-101, et seq. (the “Act”) occurred.

Complainant cites Sections 8-101, 8-404 and 9-241 of the Act as the basis for Peoples' violations. Peoples will show that not only did it not violate any of those sections but rather those sections, particularly the Section 9-241 non-discrimination provisions support Peoples' actions. Peoples will also show that although Complainant read the Act, particularly Section 8-101, as if it operates in a vacuum, other laws, particularly Part 280 of the Commission's Rules and Peoples' General Terms and Conditions tariff, required Peoples to protect itself and its other customers in dealing with RSI and its landlord. Peoples will show that the three parties it dealt with in providing service to RSI, lacked familiarity with the requirements of obtaining gas service under Peoples' tariffs. First, RSI attempted to shift its burden of providing "free access" to Peoples. Second, the consultant that RSI hired to oversee the project, John Koty of Sandman, who admittedly was unfamiliar with Peoples tariffs, had never dealt with a third party easement for gas service. Mr. Koty mistakenly believed that Peoples had an unfettered duty to provide gas service to an applicant-customer under any circumstances. Finally, the MWRD, who also was admittedly unfamiliar with Peoples' tariffs and lacked experience in dealing with third party easements, believed Peoples should execute an easement that, *inter alia*, required Peoples to assume significant environmental risks and duties regardless of whether Peoples caused any environmental damage. Therefore, of the four parties involved, only Peoples acted as required under the law and as appropriate under the circumstances because it: 1) was familiar with the Act, Commission's Rules and its tariffs, 2) had experience with third-party easements for natural gas services, and 3) met its duty to provide service to the applicant-customer RSI shortly after RSI met its duty to provide Peoples "free access". The Commission should deny the Complaint because Peoples did not violate the Act, Commission's Rules or its tariffs.

## **II. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

On October 8, 2004, RSI filed a Verified Formal Complaint with the Commission against Peoples alleging that it had been denied gas service by Respondent and requesting that Respondent provide gas service immediately and further requesting unspecified money damages for Peoples' failure to provide gas service to RSI's facility at the Property.

On October 22, 2004, RSI filed a Verified Amended Formal Complaint and a written Motion for an Immediate Order to Provide Gas Service and for Expedited Decision ("Expedited Motion"). On November 15, 2004, Peoples filed a Reply to the Expedited Motion. This Expedited Motion came on for a status hearing before a duly authorized Administrative Law Judge ("ALJ") on November 18, 2004. At the hearing, RSI again requested that the ALJ issue an immediate order requiring Peoples to initiate service. The ALJ ruled that since Peoples had executed the MWRD easement, there was no basis to issue an emergency order. The ALJ further ruled that if the company was not doing its utmost to accomplish what they represented, RSI should bring it to his attention and the ALJ would bring it to the Commission's attention. (Tr. 3-6) A subsequent status hearing was held on January 20, 2005 where the ALJ summarized the status of the service installation and RSI did not object. (Tr. 12)

On January 18, 2005, Peoples filed a written Motion requiring the parties to file written testimony, to which RSI filed a written objection. This Motion was denied by the ALJ at the January 20, 2005 status hearing.

On January 31, 2005, Peoples filed a Motion for Summary Judgment contending that as of January 26, 2005, gas service was being provided to RSI and the Commission lacked jurisdiction to award money damages to RSI. RSI filed a written response to the Motion for

Summary Judgment, and Peoples filed a written Reply. On February 16, 2005, the ALJ issued his ruling stating that the Commission has no authority to award damages, but may determine whether Peoples violated various sections of the Act. Thereafter, on February 17, 2005, Peoples filed a Motion in *Limine* requesting that the evidence in this matter be limited only to issues concerning service lines and that evidence concerning gas mains and easements other than service easements be barred. RSI never filed a response as required under Section 200.190(e) of the Commission's Rules. 83 Ill. Adm. Code 200.190(e).

On April 12, 2005, an evidentiary hearing was held. Both RSI and Peoples were represented by counsel. Respondent's Motion in *Limine* was taken under advisement by the ALJ; however, the ALJ admitted Complainant's Exhibits 1-5 into evidence, which were easements, or other land rights, but were not for service lines. A Joint Stipulation of facts and documents was agreed to by the parties and subsequently made part of the record. RSI presented two witnesses: John Koty, President of Sandman, Inc., the consultant for RSI; and Susan Morakalis, Senior Assistant Attorney for the MWRD. Peoples presented three of its employees as witnesses: John Saigh, a Sales Supervisor; Bradley Haas, Manager of Engineering Services; and, Steven Matuszak, Manager of Environmental Affairs. At the conclusion of the hearing on April 12, 2005, the record was marked "Heard and Taken."

The ALJ ordered the parties to file their Initial Briefs on June 3, 2005 and their Reply Briefs, together with any Proposed Orders, on June 28, 2005.

## **B. STATEMENT OF FACTS**

RSI retained Mr. Koty of Sandman for project design and development and to make utility arrangements. (Joint Stipulation Exhibit 1, Tr. 31) On March 15, 2001, Mr. Koty initiated on behalf of RSI contact with Respondent's Mr. Saigh, a sales supervisor, seeking gas service for

the Property. Id. The length of the service was about 1,200 feet. (Joint Stipulation Exhibit 7) RSI leased the Property from the MWRD. (Joint Stipulation Exhibit 25) Mr. Koty's initial request stated that the MWRD would grant an easement to RSI. (Joint Stipulation Exhibit 1, Tr. 97) Mr. Saigh followed Peoples' standard procedures and told Mr. Koty that RSI would be responsible for obtaining an easement and that Peoples would only provide 100 feet of free service. (Joint Stipulation Exhibit 4, Tr. 176-77) Mr. Koty subsequently told Mr. Saigh that Peoples would have to obtain an easement from the MWRD. (Joint Stipulation Exhibit 6, Tr. 36) He also asked for an estimate of Peoples cost to install the service but decided not to hire Peoples. (Joint Stipulation Exhibit 10, Tr. 43-44)

Mr. Koty had not worked on a project requiring a natural gas service from Peoples prior to this engagement. (Tr. 99) Although he had worked on projects in NICOR's territory he had not consulted on a project that required a third party easement between a landlord, not an applicant-customer, and a natural gas utility. (Tr. 100) Mr. Koty had generally familiarized himself with Peoples' tariffs and was informed by Peoples that Peoples' tariffs required a customer to provide "free access" if an easement is required. (Respondent's Cross Exhibit 1, Tr. 96 & 124)

Various contacts were had between RSI and Peoples into December 2001, wherein there was an exchange of preliminary plans for a service line to the Property. (Joint Stipulation Exhibit 11) RSI was now seeking gas service to the Property by having Peoples provide a 2-inch service line running through a 10 foot wide MWRD easement for a distance of 30 feet. (Tr. 44 & 46)

Between December 9, 2001 and September 9, 2003, RSI had no contact with Peoples regarding potential gas service to the Property. (Tr. 101-02 & 176) On September 9, 2003, Mr.

Koty on behalf of RSI sent a Memorandum and drawings to Mr. Saigh and proclaimed that “the project was alive and well.” (Joint Stipulation, Exhibit 13, Tr. 40). On January 8, 2004, Mr. Joe Tassone, an engineer in Peoples’ Design and Construction Department, sent Respondent’s standard easement Agreement for service lines to Ms. Morakalis for approval by the MWRD. (Joint Stipulation Exhibit 20)

Ms. Morakalis had only negotiated one other land right agreement with Peoples and it was an access agreement in about 2000. (Tr. 166) It took about one year to negotiate. (Tr. 168) Ms. Morakalis was not familiar with Peoples’ tariffs and she stated she had no reason to review the tariffs. (Tr. 161-62)

On January 14, 2004, Ms. Morakalis sent back a Memorandum to Mr. Saigh rejecting Respondent’s standard easement agreement and providing MWRD’s “Standard Easement” Agreement. (Joint Stipulation Exhibit 21). On February 7, 2004, Mr. Koty sent a Memorandum to Mr. Ralph Barbakoff, Peoples’ Coordinator of Design and Construction, requesting a forecasted gas service date by the end of February 2004. (Joint Stipulation Exhibit 22)

Thereafter, a series of negotiations and various amendments to the MWRD’s Easement Agreement were made by the Respondent and the MWRD in an attempt to resolve their differences regarding the Property easement. Since RSI was the applicant for service, Peoples communicated directly with RSI but copied Ms. Morakalis in all transmittals concerning the easement. (Tr. 205 & 242) On March 23, 2004 Mr. Barbakoff forwarded a letter to Mr. Koty stating that Peoples was ready willing and able to provide service to RSI upon RSI providing reasonable access. He further stated that Peoples had performed a limited review of the MWRD easement forwarded by Ms. Morakalis on January 14, 2004, and Peoples had several concerns including: 1) lack of detail and exhibits; 2) the easement was not perpetual; 3) RSI providing

financial assurances for the financial obligations that Peoples would have to assume; and 4) a full review of the provisions particularly the environmental provisions (“Full Article IX”) would be costly and that RSI would have to reimburse Peoples for its legal costs. (Joint Stipulation Exhibit 24) On April 2, 2004, Ms. Morakalis sent a fax letter to Mr. Barbakoff with a revised MWRD Easement Agreement. (Joint Stipulation Exhibit 25) Ms. Morakalis’ letter responded to certain of the issues that Mr. Barbakoff raised in his March 23, 2004 letter including: 1) providing an exhibit; 2) offering a 35-year term; 3) offering a nominal \$10 annual easement fee; and 4) stating that the MWRD’s intent of the environmental section, Full Article IX, was only that Peoples assume its responsibility under the law. On May 13, 2004 Ms. Ritscherle of McGuireWoods, LLP, Peoples’ attorney, wrote to Mr. Koty to address Peoples’ concerns with the April 2 easement the MWRD transmitted. (Joint Stipulation Exhibit 28) In 20 paragraphs, Ms. Ritscherle detailed Peoples’ issues with the latest MWRD easement draft. Most significantly, paragraph 4 requested language barring any building over the service and paragraph 20 referenced substitute Article IX language attached to the letter that would actually provide for Peoples to assume its responsibilities under the law. (Tr. 215-16)

On May 25, 2004 Ms. Morakalis responded to the 20 paragraphs in Ms. Ritscherle’s May 13, 2004 letter. (Joint Stipulation Exhibit 29) The letter stated in paragraph 4 that the MWRD added language barring building over the service but also in paragraph 20 that Full Article IX must stand as originally drafted. She also threatened that if Peoples maintained its position, the MWRD would take a different stance with future easements including significantly raising the cost. (Tr. 240-41) Mr. Matuszak testified that the threat was significant to Peoples because many of the other easements it has with MWRD that it will need to renew in the future are for significant facilities. (Tr. 248-49)

On June 17, 2004 Ms. Ritscherle responded to Ms. Morakalis' May 25, 2004 letter. (Joint Stipulation Exhibit 30) She detailed Peoples' continued concern with the latest draft. For instance, there still was no prohibition against building over the service as required by the Department of Transportation and Peoples, not the MWRD, would have to decide on the proper design. Most importantly, Peoples continued to object to Article IX.

On June 23, 2004 Ms. Morakalis responded to Ms. Ritscherle's letter. (Joint Stipulation Exhibit 31) She reiterated the MWRD's position on its unwillingness to change Full Article IX because the MWRD does not differentiate on the use of the easement. She stated that it will change the easement to bar building over the service.

Between June 23 and July 15, 2004, there were various correspondences between Mr. Koty and Ms. Morakalis and Ms. Elizabeth Ritscherle outlining and attempting to work out various issues raised by the conflicting easement agreements of Peoples and the MWRD (Joint Stipulation Exhibits 32-35). On July 15, 2004, the MWRD approved a draft Easement Agreement that was forwarded under cover letter with the same date from Ms. Morakalis to Ms. Ritscherle. (Joint Stipulation Exhibits 37-38) Ms. Morakalis mentions a change to Full Article IX in the cover letter which was the first draft where the MWRD made any changes to the environmental provisions. Mr. Matuszak testified that the easement was not accepted by the Respondent because it still had conditions that were not acceptable. (Tr. 223-24)

Additional attempts were made to conclude an easement agreement between Peoples and the MWRD. On September 14, 2004, a Revised Easement was sent by Ms. Morakalis to Ms. Ritscherle (Joint Stipulation Exhibit 45). As the fax cover page indicates, three significant changes were made to Article IX ("Revised Article IX"). First, the MWRD removed the term natural gas from the definition of hazardous materials in Article IX, Section 9.01(B)(1).

Although Ms. Morakalis testified that as soon as Peoples requested the deletion of natural gas from the definition of hazardous waste the MWRD was prepared to make the change, this was the first easement draft with the change. (Tr. 170-71) Second, Section 9.06 was changed to eliminate certain installation requirements related to containing environmental contamination. Finally, Section 9.08(E) was changed so that Peoples would only need to undertake remediation if the remediation was related to a release of natural gas. The changes eliminated the requirement of Peoples undertaking environmental assessments on the renewal or termination of the easement. (Tr. 228)

Negotiations continued until November 3, 2004 when the MWRD forwarded the easement that the MWRD and Peoples executed. The significant change between the September 14 and November 3 drafts was the elimination of a requirement that Peoples report to the MWRD minor gas leaks at the Property. (Tr. 226-27) Respondent executed the Easement Agreement for the Property on November 15, 2004 and the MWRD did so on December 3, 2004. (Joint Stipulation Exhibit 54) On January 26, 2005, gas service was provided to the Property. (Joint Fact Stipulation 58) Mr. Koty testified that prior to turning on the service Peoples performed, at its own cost, a second pressure test on the 1,200 feet of service that RSI had installed. (Tr. 87)

Ms. Morakalis stated that all the draft easements that MWRD forwarded were its "Standard Easement" (Tr. 156) and that the MWRD only executed its "Standard Easement". (Tr. 142) She stated that the MWRD Board does not review the agreement but only approves the concept of the easement. (Tr. 158-59) Also, that there were no concessions made that required MWRD Board approval. (Tr. 156) Rather, the MWRD Board authorized her and others to issue its "Standard Easement" but that the authorized individuals can make certain modifications. (Tr.

159) In her May 25, 2004 letter she took exception with the fact that Peoples was asking for changes grossly inconsistent with the MWRD “Standard Easement” but she stated under cross-examination that removing the term natural gas from the definition of hazardous materials in Article IX, Section B(1) was a clarification and not a major concession. (Tr. 156-57 & 170-71) Mr. Matuszak testified that the change was significant to Peoples. (Tr. 214-15) Although the MWRD considered all the changes minor concessions, it did not know whether they were major concessions to Peoples. (Tr. 172-73) Peoples also made concessions. For instance, although it preferred and requested a perpetual easement, the executed easement had a thirty-five year term. (Joint Stipulation Exhibit 54, Tr. 160 & 233-34)

RSI and its witness Ms. Morakalis during testimony and correspondence highlighted the fact that Peoples had executed MWRD “Standard Easements” with Full Article IX provisions. (Joint Stipulation Exhibit 25, Tr. 130-33) RSI introduced five easements that Ms. Morakalis described as MWRD “Standard Easements” containing Full Article IX. (Complainant’s Exhibits 1-5, Tr. 130-33) Both Mr. Haas and Mr. Matuszak testified that those land rights documents were not services, but they were for or related to large installations serving all of Peoples’ customers such as a transmission line (Complainant Exhibit 1), soil borings for a regulator station (Complainant Exhibit 2), a regulator stations (Complainant Exhibit 3), a tunnel under a river (Complainant Exhibit 4), and a 42-inch main (Complainant Exhibit 5). (Tr. 193-98 & 236-37) They also testified that many of the easements were for multi-million dollar facilities that go back many years and were renewals of old agreements. (Tr. 196 & 236-37)

Mr. Matuszak testified that the Full Article IX provisions were onerous particularly because of the inclusion of natural gas in the definitions of hazardous materials and the related investigative and remediation duties that it placed on Peoples. (Tr. 206-07 & 210) As originally

drafted, Full Article IX would have required Peoples during the term of the easement or at its expiration to undertake a Phase I environmental review and, under the MWRD's sole discretion, a Phase II environmental review both as developed by the American Society for Testing of Materials. (Tr. 210-11) Mr. Matuszak testified that a Phase I environmental review must be prepared by licensed professional engineer, would require Peoples to investigate the history of ownership and use of the property and cost about \$2,000 to \$3,000. (Tr. 211) A Phase II environmental review would require Peoples to do physical soil and ground water sampling on the Property which would cost between \$30,000 and \$40,000. (Tr. 211-12) Mr. Matuszak's major problem was that because natural gas leaks to the atmosphere it does not remain in the soil or ground water but that it was in the MWRD's sole discretion to determine whether as a result of the Phase I and Phase II reviews, Peoples should have to undertake a clean-up of the Property. (Tr. 212-13) Based on Mr. Matuszak's experience with the MWRD, that would probably require cleaning the Property to a pre-industrial condition, something before industry was ever here. Because Chicago is an industrial area, many of the areas of the city already have levels that exceed clean-up levels. Id.

Mr. Haas testified that customers needing an easement to provide access for Peoples to install a service is an unusual event. Also, that Peoples usual procedure is to work with the applicant or customer in obtaining the easement. (Tr. 189) He and Mr. Matuszak testified that Peoples only obtains an easement when the landlord requests one. (Tr. 185-86 & 208) Although Mr. Saigh was one of the primary contacts at Peoples for developers and consultants (Tr. 175), and Peoples installed about 2,000 services per year, RSI's request for a service easement was the only request Mr. Saigh had received during the five-year period from 2000 through 2004. (Tr. 180) In fact, Peoples had installed 11,000 services during the five-year period (Tr. 185) and had

only been granted 5 service easements. (Respondent Exhibits 3-6, Tr. 186) All but one of the five landowners granting Peoples an easement executed Peoples' standard easement that had four important provisions: 1) parties; 2) description and drawing of the property; 3) a prohibition against building on the easement; and 4) a termination clause typically allowing Peoples to abandon its facilities in place. (Joint Stipulation Exhibit 20, Tr. 189) Three of the five easements were granted by government agencies. (Respondent's Exhibits 4, 5 & 7) The State of Illinois' easement had additional terms from Peoples' standard easement but none of the terms or conditions was detrimental to Peoples or required Peoples to forfeit any rights. (Peoples Exhibit 7, Tr. 192) RSI stipulated that Peoples' standard easement does not contain MWRD Article IX environmental provisions. (Tr. 232)

### **III. ARGUMENT**

Peoples first requests that the ALJ reconsider its decision and recommend that the Commission grant Peoples' Motion in *Limine*. RSI's complaint concerns the installation of a gas service on a related gas service easement as provided for under the Act, Commission's Rules and Peoples' tariffs. Issues concerning gas mains and land rights other than easements for gas mains are not relevant. Second, Peoples shows that the Complaint should be denied because RSI failed to meet its burden of demonstrating Peoples violated Section 8-101 of the Act. Third, Peoples argues that the Complaint should be denied because RSI did not provide evidence of violations of any other section of the Act. Finally, Peoples asks the Commission to conclude that the MWRD in future easement negotiations with Peoples should agree to the Revised Article IX "Standard Easement" language that is contained in the executed Peoples' easement for the Property.

**A. PEOPLES MOTION IN *LIMINE* SHOULD BE GRANTED**

Peoples filed its written Motion in *Limine* on February 17, 2005 to bar submittal of evidence related to gas mains and concerning land rights for other than service easements. RSI did not file a reply as required by Section 200.190(e) of the Commission's Rules. 83 Ill. Adm. Code 200.190(e) At the evidentiary hearing on April 12, 2005, the ALJ, while inclined to deny the Motion, took it under advisement and gave Peoples the opportunity to renew the Motion (Tr. 24). As previously noted, the ALJ admitted Complaint's Exhibits 1-5. (Tr. 250). The ALJ and the Commission should re-consider and deny the admission of Complainant's Exhibits 1-5 and strike testimony related to gas mains and land rights for other than service easements. At the outset, it is crucial to an understanding of some of the principle issues to be determined that the Motion in *Limine* be granted. The Motion in *Limine* was filed to properly focus RSI's complaint in this matter. As previously mentioned, RSI sought gas service to the Property from Peoples by means of a 2-inch service line running a distance of 30 feet within a 10 foot easement area. (Tr. 44 & 46) This service line would serve only one customer, RSI. RSI's landlord, the MWRD required an easement before it would allow Peoples to install the 2-inch service line on the MWRD Property. (Joint Stipulation Exhibit 25)

The Motion in *Limine* properly sought to restrict evidence to only service line issues. That is, evidence and arguments on easements for other purposes, including easements for gas mains, or to argue the matter of gas main easements in any manner is not relevant and should not be considered by the ALJ in deciding this complaint case. The provision of service lines is covered in Peoples' tariffs. (Respondent's Cross Exhibit 1)

A substantial portion of the testimony presented by Ms. Morakalis on behalf of RSI, dealt with the issue of mains, not service lines. (See for example, Tr. 130-34) Mr. Haas clearly

differentiated the five RSI Exhibits, MWRD easements with Peoples testifying, as follows: Complainant's Exhibit 1 dealt with a 30-inch main; Exhibit 2 was for soil borings related to a regulator station; Exhibit 3 was for a regulator station connection with NICOR; Exhibit 4 was for a tunnel under the Cal-Sag channel and an 8-inch blow-off; and Exhibit 5 was for a 42-inch main. As Mr. Haas noted, those five easements would serve all of Peoples customers, not just a single customer (RSI). (Tr. 193-198). MWRD easement agreements for large mains, soil borings and tunnels are totally unrelated and irrelevant to the issue of the provision of a two-inch gas service line to RSI. RSI did not present a single shred of evidence regarding the MWRD's negotiations or dealing with the provision of a service line on any of its other property, whether involving Peoples, or any other entity.

Any references to main installations and related easements or easements for other than service pipes with the MWRD, or indeed, any other party, are not relevant to RSI's complaint that involved the installation of a gas service to serve RSI pursuant to Peoples' tariffs. Obviously, Peoples provision of mains and other installations than service lines serve many Peoples customers and would, of necessity, require other considerations to come into play before Peoples could provide service. Also, both Mr. Haas and Mr. Matuszak testified that land rights granted with respect to Complainant's Exhibits 1-5 generally concerned renewals of easements for multi-million dollar facilities that had been in place for many years. (Tr. 196 & 236-37) Again, much of RSI's testimony concerned the MWRD's policy and its attempt to foist upon Peoples easement requirements which Peoples should not agree to.

The determination of this Complaint must more narrowly focus on the service line issue, not the universal issues of mains and other larger and totally irrelevant installations. RSI required a 2-inch service line from Peoples. Peoples installed a gas service line that only serves

RSI. RSI had ample opportunity to respond to Peoples' Motion in *Limine*, but did not do so as required by the Commission's Rules. At the outset of the evidentiary hearing, the Motion in *Limine* should have been granted and RSI's testimony and Complainant's Exhibits 1-5 should not have been admitted in evidence. The Motion in *Limine* properly sought to restrict the evidence presented to the relevant issue of providing a service line to RSI and thus, the Motion in *Limine* should now be granted.

**B. RSI'S COMPLAINT SHOULD BE DENIED BECAUSE RSI HAS FAILED TO DEMONSTRATE THAT PEOPLES VIOLATED SECTION 8-101 OF THE ACT.**

RSI's principal contention in this Complaint matter is that pursuant to Section 8-101 of the Act (220 ILCS 5/8-101), Peoples failed to provide gas service to RSI's Property without discrimination and without delay. Specifically, Section 8-101 reads, in relevant part, as follows: "Every public utility shall, upon reasonable notice, furnish to all persons who may apply therefore and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay." The Complainant, RSI, has the burden of proof to demonstrate that Peoples violated Section 8-101. RSI has failed to show by a preponderance of the evidence that Peoples violated Section 8-101.

In order for the Commission to determine that Peoples violated Section 8-101, four inquiries must be answered in the affirmative, as follows: 1) did RSI provide reasonable notice for Peoples to provide a service based on RSI's required date? 2) was RSI reasonably entitled to service prior to RSI providing Peoples with "free access"? 3) did Peoples delay in providing gas service to RSI once the final easement providing "free access" was executed? and 4) did Peoples discriminate in any way against RSI? The answer to all four inquiries is "No" and therefore Peoples never violated Section 8-101.

**1. RSI NEVER PROVIDED REASONABLE NOTICE BECAUSE IT NEVER PROVIDED A DATE WHEN GAS SERVICE WAS REQUIRED**

The first inquiry under Section 8-101 is whether RSI provided reasonable notice as to when it needed service. As previously mentioned, Mr. Koty did request a forecast of availability of service from Peoples by the end of February 2004. However, there is no record evidence that he ever advised Peoples of a date when gas service was required to be provided. To the contrary, when asked on cross-examination what the target date to complete construction of the RSI facility, he could not remember. (Tr. 105) Thus, one is only left with conjecture as to the date when RSI required gas service. While Mr. Koty was responsible to RSI and concerned about construction delays and the interruption in construction sequencing (Tr. 88), and his anxiety in being provided gas service to the Property is shown in his correspondence to Peoples, his correspondence never indicated a target date for completion of the Property facilities. (Joint Stipulation Exhibit 23)

The evidence indicates that gas service was not required until the last quarter of 2004. The cross-examination of Mr. Koty reveals RSI's construction schedule. RSI received building permits from the City of Chicago in July or August 2004. The water and sewer lines to serve the Property were in the ground in August 2004. Electricity was provided to the property just after Christmas 2004, with telephone service being provided in mid-December 2004. (Tr. 116-119). It was not until September 9, 2004, that RSI's general contractor had any contact with Peoples (Joint Stipulation Exhibit 44), which coincided with the pressure testing of its own service line from the easement to its facilities. RSI did not occupy its main administration building until February-March 2005. (Tr. 117).

In sum, RSI did not provide reasonable notice because it never provided a specific date as to when it needed service. While RSI was pressing for information about when gas could be

provided to its Property, it was not ready to begin construction until after it received its building permit from the City of Chicago. The provision of gas service by Peoples was just one of the utility services required to the Property. One must conclude that until RSI provided a specific date when service was required, Peoples was not legally obligated under Section 8-101 of the Act to provide service to the Property.

**2. RSI FAILED IN ITS OBLIGATION TO PROVIDE “FREE ACCESS” UNTIL THE MWRD EXECUTED THE FINAL EASEMENT IN DECEMBER 2004**

The second inquiry under Section 8-101 was whether RSI was reasonably entitled to service before it provided Peoples “free access” and did it provide “free access” prior to the MWRD executing the final easement in December 2004. The provision of gas service to RSI is not done in a vacuum. Throughout the entire process of obtaining gas service from Peoples, Peoples was obliged not only to follow its own tariffs, but also the rules and regulations of the Commission. During the relevant time period, RSI was an applicant for service as defined in 83 Ill. Adm. Code 200.40. The relevant tariff is Peoples General Terms and Conditions of Service, Ill. C.C. No. 27, Second Revised Sheet No. 24, Respondent’s Cross Exhibit 1, which states in relevant part under the Access to Premises Section that “[the] properly authorized agents of the Company shall, at all reasonable hours, have free access to the premises of the customer for the purpose of initiating, ...and installing...property and equipment.” (Emphasis added) From the foregoing tariff language, it is clear that RSI, as the applicant-customer, was the entity obligated to provide “free access” to Peoples. In plain terms, RSI, not Peoples, was obliged to obtain and provide the easement required by its landlord the MWRD.

Mr. Saigh provided relevant testimony on the “free access” issue. Mr. Saigh testified that he informed Mr. Koty that RSI had the responsibility to provide the easement to Peoples (Tr. 176-77). Mr. Koty admitted that from the outset, in March 2001, Peoples made Mr. Koty aware

that under an easement situation, RSI is the one obligated to provide access. (Tr. 96). Mr. Saigh further stated that, although Peoples installs about 2,000 services per year, for the period of 2000 to September 2004, he had only received one service line easement request and that was by Mr. Koty on behalf of RSI. (Tr. 180-81)

Although it was clear from the onset that RSI was responsible for obtaining “free access” for Peoples, RSI through Mr. Koty, who was responsible for project design and development and to make utility arrangements, was entrenched in its position that Peoples should bear RSI’s legal duty. (Joint Stipulation Exhibit 1 & 6, Tr. 31 & 36) Although Mr. Koty initially told Mr. Saigh that RSI would obtain an easement from the MWRD, he subsequently told Mr. Saigh that Peoples would have to obtain an easement from the MWRD. (Joint Stipulation Exhibit 1, Tr. 36)

Mr. Koty had not worked on a project requiring a natural gas service from Peoples prior to this engagement. (Tr. 99) Although he had worked on projects in NICOR’s territory he had not consulted on a project that required a third party easement between a landlord, not an applicant-customer, and a natural gas utility. (Tr. 100) Mr. Koty had generally familiarized himself with Peoples’ tariffs. (Tr. 96 & 124) Importantly, Mr. Koty understood and accepted certain tariff provisions and Commission Rules because when Mr. Saigh informed him that RSI would only provide 100 feet of free service (Joint Stipulation Exhibit 4, Tr. 176-77), Mr. Koty asked Peoples for an estimate of the cost to install the service but decided not to hire Peoples. (Joint Stipulation Exhibit 10, Tr. 43-44)

Mr. Koty’s misunderstanding and pique regarding negotiations for an easement and his role in those negotiations appears to be based upon his misconception of RSI’s responsibility as the applicant-customer, rather than the landowner the MWRD, for negotiating an easement that provided “free access” for Peoples’ gas service. Under the law and from Peoples’ standpoint,

RSI was the applicant and is now its customer and had to be fully apprised of the progress and responsible for reaching an easement agreement between Peoples and the MWRD. That is why Mr. Koty was either directly sent or copied with all correspondence. (Tr. 205 & 242)

There was very confusing testimony by RSI's witness Ms. Morakalis as to the MWRD's "Standard Easement" and the drafts and final easement for the Property. Ms. Morakalis stated that all the draft easements that MWRD forwarded were its "Standard Easement" (Tr. 156) and that the MWRD only executed its "Standard Easement" (Tr. 142) In her May 25, 2004 letter she took exception with the fact that Peoples was asking for changes grossly inconsistent with the MWRD "Standard Easement" but she stated under cross-examination that removing the term natural gas from the definition of hazardous materials in Article IX, Section B(1) was a clarification and not a major concession. (Tr. 156-57 & 170-71) Mr. Matuszak testified that the change was significant to Peoples. (Tr. 214-15) Although the MWRD considered all the changes minor concessions, it did not know whether they were major concessions to Peoples. (Tr. 172-73)

Ms. Morakalis correctly noted that MWRD's "Standard Easement" Agreement provided Peoples with "free access" when the parties reached a final agreement on the easement in November 2004. (Joint Stipulation Exhibit 54, Tr. 144) Up until then, RSI had not met its legal obligation under Peoples' tariffs to provide "free access" so that Peoples could install the 2-inch service pipe required for the Property. Of course, Peoples continually understood and met its legal requirement to follow the Act, the Commissions' Rules and its own tariffs.

The "free access" provisions in Peoples' tariffs are easily understood. Mr. Koty accepted and understood the somewhat more complicated rules related to free service under Peoples' tariffs and the Commission's Rules. The evidence clearly shows that RSI chose to ignore its

duty under Peoples' tariff of providing "free access" and attempted to shift it to Peoples. It was not until the MWRD executed its easement in December 2004 that RSI met its duty. Peoples did not violate the Act because, not only did it negotiate in good faith with the MWRD to obtain and appropriate service easement, it had no duty to install the service prior to RSI providing "free access" and RSI did not provide "free access" until the MWRD executed the final easement in December 2004.

**3. RSI HAS FAILED TO DEMONSTRATE THAT PEOPLES DELAYED IN PROVIDING IT SERVICE**

The third Section 8-101 inquiry which is answered in favor of Peoples is "did Peoples delay in providing gas service to RSI once the final easement providing "free access" was executed?" Peoples meets this test in two ways. First, it was Peoples' duty to negotiate a service easement that was appropriate. Finally, RSI cannot plausibly argue that Peoples delayed when it never provided Peoples a specific timeline for its project or when it expected service.

**a. PEOPLES DID NOT DELAY BECAUSE IT INSTALLED COMPLAINANT'S SERVICE SHORTLY AFTER COMPLAINANT'S LANDLORD EXECUTED THE AGREED TO EASEMENT.**

The first reason Peoples complied with the "without delay" requirement of Section 8-101 is that it had a duty to negotiate an appropriate service easement and installed RSI's service in a short time span following MWRD's execution of the easement. Given the facts and circumstances in this matter, Peoples provided service to RSI in as reasonably prompt a manner as possible. The circumstances herein are unique for three reasons. First, the Complainant's landlord, MWRD, required respondent to obtain an easement in order for Peoples to install the gas service. Peoples had installed about 11,000 services over the prior five years (Tr. 185) and only obtained five service easements. (Respondent's Exhibits 3-6, Tr. 186) Although three of the five grantors were governmental agencies, all five had executed either Peoples' standard

easement or an easement substantially similar to Peoples' standard easement. (Joint Stipulation Exhibit 20, Tr. 189) Second, Complainant whose consultant was admittedly unfamiliar with Peoples' tariffs (Tr. 96), refused to be responsible for RSI's duty to provide Peoples "free access". (Joint Stipulation Exhibit 22) Peoples usually dealt with the applicant or customer in obtaining an easement. (Tr. 189) Therefore, Peoples was forced to deal with the MWRD which insisted on its own "Standard Easement" agreement. It is also a unique situation because the required installation for the Property was a 2-inch service line and the MWRD did not consider the use of the facility when transmitting its "Standard Easement" agreement and the "Standard Agreement" was not tailored for the provision of a service to a single customer. (Tr. 162-63)

On January 8, 2004, Peoples sent its standard easement agreement for a service line to the MWRD. (Joint Stipulation Exhibit 20) On January 14, 2004, the MWRD rejected that agreement and offered its own "Standard Easement" agreement. (Joint Stipulation Exhibit 21) Had the MWRD executed Peoples' standard easement agreement for a service line, RSI would have had service much earlier and would not have filed its Complaint. Peoples needed "free access" to the Property to provide RSI with a 2-inch service line. As previously noted, "free access" was achieved only after the execution by MWRD of the final easement agreement in December 2004. (Joint Stipulation Exhibit 54)

Any objective review of the Joint Stipulation reveals that Peoples, at all times, dealt in good faith with the MWRD and RSI. As previously mentioned, as early as January 8, 2004, Peoples sent its standard easement agreement for services to the MWRD. Thereafter, when the MWRD rejected that agreement and insisted on its own "Standard Easement" Agreement, Peoples first outlined (Joint Stipulation Exhibit 24), by a letter dated March 23, 2004 from Ralph Barbakoff to Ms. Morakalis, the general concerns Peoples had with the MWRD "Standard

Easement” Agreement. Then, much more specifically, the business, operational and environmental concerns of Peoples were detailed by Ms. Ritscherle in her letter dated May 13, 2004, to Ms. Morakalis. (Joint Stipulation Exhibit 28).

Throughout the entire negotiations from January 8, 2004 to early November 2004, both Peoples and the MWRD engaged in good faith negotiations in order to settle the business, operational and environmental concerns raised by them during their negotiations. It is obvious from a review of the testimony of Mr. Matuszak and Ms. Morakalis that each side had legitimate concerns. The MWRD’s concerns centered around its charge to protect the environment. (Joint Stipulation Exhibit 27, Tr. 134-135). Throughout the negotiations Peoples principal concerns were that: 1) the easement had to have a provision meeting the Department of Transportation requirement that nothing could be built over the service; and 2) the onerous provisions in Full Article IX, that placed substantial environmental burdens on Peoples even if Peoples was not the cause of the problem, had to be changed. (See for example, Joint Stipulation Exhibits 24, 28 and 30, Tr. 215-16 & 223-24) Concessions were made on both sides. The MWRD made changes to its “Standard Easement” in the executed agreement that Peoples felt were critical to a service easement particularly the Revised Article IX environmental terms. (Tr. 214-15) Peoples also made concessions including agreeing to a thirty-year term rather than a perpetual easement. (Tr. 160 & 233-34) Those concessions were made after every written modification of an easement agreement. Although the MWRD forwarded several letters during negotiations refusing to change Full Article IX, at the evidentiary hearing the MWRD considered those concessions to be minor (Tr. 173), while Peoples considered them to be major concessions (Tr. 227). Mr. Matuszak stated why Peoples considered those concessions to be significant, as follows:

“Because they – they obligated the Company to perform certain tasks that we normally don’t have to perform and that would have been costly to the Company.

Also, they had a provision that when the easement was renewed, that you Automatically had to do a Phase I or a Phase II assessment.

So we were automatically agreeing to perform those assessments at renewal time.” (Tr. 228)

In addition, another major concession was the removal of the remediation clause in the MWRD’s easement agreement that would have required Peoples to investigate and remediate the Property. (Tr. 229). Mr. Matuszak testified that, as originally drafted, the Full Article IX provisions were onerous particularly because of the inclusion of natural gas in the definition of hazardous materials and the related investigative and remediation duties that it placed on Peoples. (Tr. 206-07 & 210) These duties included undertaking a Phase I environmental review and, under the MWRD’s sole discretion, a Phase II environmental review both as developed by the American Society for Testing of Materials. (Tr. 210-11) Mr. Matuszak testified that a Phase I environmental review requires Peoples to investigate the history of ownership and use of the property and costs about \$2,000 to \$3,000. (Tr. 211) A Phase II environmental review would require Peoples to do physical soil and ground water sampling on the Property which would cost between \$30,000 and \$40,000. (Tr. 211-12) Mr. Matuszak’s major problem was that because natural gas leaks to the atmosphere it does not remain in the soil or ground water but that it was in the MWRD’s sole discretion to determine whether as a result of the Phase I and Phase II reviews, Peoples should have to undertake a clean-up of the Property. (Tr. 212-13) Based on Mr. Matuszak’s experience with the MWRD, that would probably require cleaning the Property to a pre-industrial condition, something before industry was ever here. Because Chicago is an industrial area, many of the areas of the city already have levels that exceed clean-up levels. Id. These environmental clauses are particularly onerous to Peoples because, as here, the easement

is not perpetual (for 35 years), and Peoples' only provided a 2-inch service line for a length of 30 feet.

The large number of written contacts between Peoples and the MWRD and RSI (oral contacts are alluded to in the Joint Stipulation Exhibits) over the first ten months of 2004 (over two dozen as shown on the Joint Stipulation), also indicates a good faith attempt by all parties to resolve differences. At all times in dealing with RSI and the MWRD, Peoples acted reasonably and attempted to provide service to the Property as quickly as possible. There is no evidence that Peoples refused to negotiate an easement with the MWRD.

Likewise, there is no evidence that Peoples delayed or refused to provide gas service to the Property and in fact is providing RSI gas service. Quite the contrary, on March 20, 2001, Mr. Saigh's letter to Mr. Koty welcomed the possibility of providing service to RSI. (Joint Stipulation Exhibit 4) Again, on March 23, 2004, Mr. Barbakoff's letter to Mr. Koty indicated that Peoples was desirous of providing service to RSI. (Joint Stipulation Exhibit 24). Mr. Koty's testimony confirms that he, at no time, believed that RSI would not be provided service by Peoples. (Tr. 94-95).

There is no way to determine a reasonable time to negotiate the easement which the MWRD required before Peoples could provide service to RSI. Ms. Morakalis had only negotiated one other land right agreement with Peoples and it was an access agreement in about 2000. (Tr. 166) It took about one year to negotiate. (Tr. 168) Peoples has the right and, indeed, the obligation on behalf of all of its customers to negotiate a reasonable and fair easement. Peoples and the RSI came to the negotiations with different perspectives. In spite of the plain language of Peoples' tariff placing a duty on RSI to provide Peoples "free access", RSI thought it could not only shift the duty to Peoples but also that Peoples had an unfettered duty to execute an

MWRD easement regardless of the terms and conditions in order for Peoples to provide RSI service. Peoples knew its legal duty with respect to providing a service line to serve a single customer. If the Commission determines that by taking the time to negotiate an appropriate service easement providing “free access” Peoples failed to provide service without delay to RSI, then, in effect, it takes away from Peoples its right to negotiate easement terms. Worse, it places Peoples in the position of accepting responsibility and the related investigation and remediation costs for the environmental condition of any property where an applicant or customer requests services.

The answer to the third inquiry in determining whether Peoples violated Section 8-101, “did Peoples delay in providing gas service to RSI once the final easement providing ‘free access’ was executed?” is “No”. MWRD executed the easement on December 3, 2004 and the service was installed on January 26, 2005. The short time period included the holiday season, winter weather and the need for Peoples to test RSI’s own pipe installation which Peoples did at its own cost. (Tr. 87) RSI never objected to the time it took Peoples to install the service subsequent to the MWRD executing the easement. Even though it was the subject of RSI’s Expedited Motion and discussed at the November 18, 2004 and January 20, 2005 status hearings. In sum, under the facts and circumstances of this complaint, RSI failed to show that Peoples violated Section 8-101 of the Act by delaying in providing RSI service. Moreover, Peoples has clearly demonstrated that it complied with Section 8-101 by providing gas service to RSI without delay and upon being granted “free access” to the Property after the execution of the easement agreement in December 2004.

**b. RSI HAS FAILED TO ESTABLISH ANY TIMELINE TO DETERMINE ANY DELAY IN PROVIDING SERVICE.**

The second reason Peoples did not delay in providing service under Section 8-101 is RSI never provided a timeline establishing a delay. As a corollary to RSI's failure to provide a date when gas service was required, RSI also failed to establish any timeline to determine any Peoples' delay in providing service. An examination of the initial complaint and amended complaint as well as RSI's testimony fails to indicate what period of time is being complained of so as to determine whether Peoples acted without delay in providing gas service to RSI's Property.

The initial and amended complaints filed by RSI trace correspondence between RSI and Peoples and RSI, MWRD and Peoples for a period between March 15, 2001 to the signing of the final easement agreement in December 2004, or a period of over 3 and 1/2 years. While it is true that Peoples welcomed RSI's application for service on March 20, 2001 (Joint Stipulation Exhibit 4), and other correspondence took place in 2001, it was not until September 9, 2003, that RSI informed Peoples that its Property project was going forward. (Joint Stipulation Exhibit 13) RSI cannot claim that the period of unreasonable delay commenced in March 2001, when it had no contact with Peoples from December 2001 to September 9, 2003.

From September 9, 2003 to January 14, 2005, there was various written communications between RSI and Peoples. As previously mentioned, on January 8, 2004, Peoples sent the MWRD its standard service line easement, which was rejected by the MWRD on January 14, 2004. On February 7, 19 and 26, 2004 (Joint Exhibit 22 and 23), Mr. Koty inquired about obtaining a service date from Peoples by the end of February 2004. RSI cannot claim that the period of unreasonable delay commenced before the end of February 2004.

A review of the Joint Stipulation indicates that between March 2004 and October 8, 2004, when RSI filed its Verified Formal Complaint, there were 22 separate pieces of correspondence between RSI, its general contractor, Althoff Industries, the MWRD and Peoples. The Joint Stipulation documents for this period further indicate that there were verbal contacts between Peoples and the MWRD. Surely, RSI cannot claim that the parties were not attempting to work out their differences so that an easement agreement could be reached and RSI provided gas service.

RSI witnesses did not provide a timeline to negotiate an MWRD easement with Peoples. The cross-examination of Mr. Koty is an example of the failure to set a reasonable timeline for an easement in this matter. In response to a question from the ALJ, Mr. Koty opined that there are always problems in arranging for utility service and that a six months' time allocation was typical. (Tr. 92) While at first blush, Mr. Koty seems to set a timeline, he provides no date from which the Commission could measure the reasonableness of his six months' allocation. Moreover, as shown by Peoples' counsel cross-examination of Mr. Koty, he indicated that the RSI easement was the first time he had dealt with Peoples; his experience with NICOR was in a situation where his client owned the property; and, as here, he had never dealt with a third-party situation. (Tr. 98-100) Thus, Mr. Koty's six months' easement allocation is mere conjecture and speculation and does not fit the facts and circumstances of this case.

Ms. Morakalis also sought to provide a timeline for the execution of an easement between Peoples and the MWRD. On cross-examination by the ALJ, Ms. Morakalis stated that based upon her experience, it should take 3-4 months from the time someone applies for an easement to its execution. (Tr. 153) However, on further cross-examination by Peoples' counsel, similar to that of Mr. Koty, she acknowledged that she had never worked with third-

party easements. (Tr. 154) Ms. Morakalis further acknowledged that she had only negotiated one other easement with Peoples for the pumping station site at 95th Street and the Skyway in South Chicago. Significantly, she also acknowledged that the 95th Street and the Skyway easement (Complainant's Exhibit 5) took one year to negotiate. (Tr. 166-68). Thus, this single experience did not correlate with Peoples providing a service line to RSI, a single customer, under a third party easement, and contradicts her three to four months timeline.

What is clear from the foregoing is that there can be no set time to negotiate an easement. As facts and circumstances vary, so would the time needed to negotiate an easement vary over time. The record herein is also clear that the service line easement to the RSI property was a unique, first-of-a-kind situation, for both the MWRD and Mr. Koty. Under such a circumstance, it would of necessity require a longer period of time for a meeting of the minds between Peoples and the MWRD. This is particularly true, when, as in this case, Peoples and the MWRD each had legitimate concerns that each sought to protect. Since RSI and its representatives did not provide Peoples a proposed timeline and lacked experience in negotiating this type of easement, Peoples cannot be held responsible for any delay in installing the service.

#### **4. PEOPLES DID NOT DISCRIMINATE IN PROVIDING SERVICE TO RSI**

The forth inquiry under Section 8-101 is "did Peoples discriminate in any way against RSI?" Clearly the answer to this inquiry is "No". In fact, RSI provided no evidence of any discriminatory actions on Peoples part or what group, applicant or customer that Peoples discriminated in favor of and against RSI. This is true also with respect to Section 9-241 mentioned below. In fact, by referencing discrimination, RSI unwittingly supports Peoples position. Peoples detailed above how it only had been granted five easements in installing 11,000 services during the previous five-year period. All five of those easements were in the form of or substantially similar to Peoples' standard easement. Had Peoples executed the

original “Standard Easement” that MWRD forwarded on January 14, 2004, Peoples would not only have made a poor business decision, it would also have discriminated against its other customers. It had never executed a service easement where the customer was required to provide “free access” with onerous terms and burdens that the MWRD was attempting to foist on Peoples. There is simply no record evidence of any discrimination on the part of Peoples against RSI. A review of the Joint Stipulation documents and the testimony confirms that Peoples did not discriminate against RSI.

In sum, under the facts and circumstances of this complaint, RSI failed to show that Peoples violated Section 8-101 of the Act. Moreover, Peoples has clearly demonstrated that it complied with Section 8-101 by providing gas service to RSI without delay and without discrimination upon being granted “free access” to the Property after the execution of the easement agreement in December 2004.

**C. RSI HAS NOT PROVIDED ANY EVIDENCE OF OTHER VIOLATIONS OF THE ACT**

In her opening statement, counsel for RSI contended that, in addition to Peoples violating Section 8-101 of the Act, Peoples also violated Section 8-404 and Section 9-241 of the Act. Section 8-404 was repealed in 1997. As detailed under the discrimination prong of Section 8-101 above, allegations of discrimination under Section 9-241 were neither supported by any evidence nor apply to the factual situation set forth in RSI’s Complaint. Also, RSI did not present any evidence regarding alleged violations of Section 9-241 of the Act.

**D. PEOPLES REQUESTS THE COMMISSION TO URGE THE MWRD TO INCLUDE THE REVISED ARTICLE IX LANGUAGE IN FUTURE “STANDARD EASEMENT” AGREEMENTS WITH PEOPLES**

Peoples has many land right agreements with the MWRD going back decades. These regularly come up for renewal and Peoples also requests additional land rights from MWRD.

Ms. Morakalis in her letter dated May 25, 2004 threatened Peoples as to the consequences of future land rights negotiations if Peoples did not alter its position with this easement. (Joint Stipulation Exhibit 29, Tr. 240-41) Peoples was particularly interested in language that barred building over its pipe and substantially changed Article IX. (Tr. 223-24 & 228) Ms. Morakalis at the evidentiary hearing testified that these were minor concessions for the MWRD, could be made without MWRD Board approval and would still be included in the definition of a MWRD “Standard Easement”. (Tr. 156-59 & 170-71) Peoples requests that in the best interest of Peoples and its customers, that the Commission in its final order urge the MWRD to agree to these minor concessions, as described under oath by MWRD’s attorney, in future land rights documents it grants Peoples.

#### **IV. CONCLUSION**

For all of the reasons set forth above, Peoples Motion in *Limine* barring admittance of evidence concerning gas mains or other than service easements should be granted, the Complaint filed by Recycling Services (RSI) against The Peoples Gas Light and Coke Company should be denied and in the final order the Commission should urge the MWRD to include the final language in the subject easement in future land right agreements with Peoples.

Respectfully submitted,  
THE PEOPLES GAS LIGHT AND COKE  
COMPANY

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